United Nations S/2016/722

Security Council

Distr.: General
18 August 2016

Original: English

Letter dated 18 August 2016 from the Secretary-General addressed to the President of the Security Council

As requested by the Security Council in paragraph 13 of its resolution 2286 (2016), I have the honour to submit my recommendations on measures to enhance the protection of, and prevent acts of violence against, the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, and their means of transport and equipment, as well as hospitals and other medical facilities, and to better ensure accountability for such acts.

The recommendations aim to enhance the practical application of protections afforded under international law; they do not aim to modify existing international obligations or create any new ones. The recommendations and a brief introductory note are annexed hereto.

I would be grateful if you could bring the present letter and its annex to the attention of the members of the Security Council. I remain at their disposal should they wish to be briefed on these recommendations.

(*Signed*) **BAN** Ki-moon

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Annex

Recommendations of the Secretary-General, submitted pursuant to paragraph 13 of Security Council resolution 2286 (2016), on measures to prevent acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and to better ensure accountability and enhance their protection

Introduction

1. The growing insecurity of medical care in armed conflict* is part of a broader trend of blatant disregard for the fundamental norms that safeguard humanity. In a number of ongoing armed conflicts, all too often, medical facilities and transports are bombed, shelled or looted, medical workers are threatened, kidnapped, injured or killed, fighting occurs within or near medical facilities and access to medical care is arbitrarily obstructed. Although consistent, worldwide data on such violations is still lacking, the reality on the ground is unequivocal. According to secondary data consolidated by the World Health Organization, in 2014 and 2015, there were 594 records of attacks against medical care in 19 countries. In 2015, Doctors without Borders reported attacks on 75 medical facilities that it managed or supported. From 2012 to 2014, the International Committee of the Red Cross reported that 2,400 attacks against patients and medical personnel, facilities and transports had occurred in 11 conflict-affected countries. The immediate consequences of such violence are loss of life, injury, destruction and deprivation of vital care. In the long term, it results in disruption to the provision of medical care for thousands of patients, sometimes lasting even after the fighting has stopped.

2. On 3 May 2016, the Security Council unanimously adopted resolution 2286 (2016) in response to its deep concern about the acts of violence, attacks and threats against medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, being perpetrated in armed conflict. I warmly welcome the Security Council's determination to strengthen the protection of medical care in armed conflict.

3. In its resolution 2286 (2016), the Security Council underlines the continued and critical importance of international humanitarian law. It calls on Member States and all parties to armed conflict to comply with their long-standing obligations and to adopt practical measures to prevent and end violence against medical care and ensure accountability for violations. All State and non-State parties to armed conflict are bound by a strict obligation to respect and protect medical workers and

* Throughout these recommendations, the expression "medical care in armed conflict" encompasses "the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities", as reflected in Security Council resolution 2286 (2016). The expression "medical care in armed conflict" is solely intended as shorthand and does not alter the scope of the resolution.

facilities, as well as the wounded and sick. As I have urged in recent reports, the enactment and enforcement of domestic laws and regulations, education and training, cooperation with local communities, the systematic collection and reporting of data on alleged violations and the investigation and prosecution of alleged violations are all essential to enhance the protection of medical care in armed conflict.

4. In paragraph 13 of resolution 2286 (2016), the Security Council requests me to promptly provide it with recommendations on measures to prevent acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities and to better ensure accountability and enhance their protection.

5. Following consultations with relevant United Nations and non-governmental entities, including humanitarian and medical organizations operating in situations of armed conflict, I present a number of key recommendations to respond to the request by the Security Council. These recommendations set out practical measures that all States should implement to prevent acts of violence, attacks and threats against medical care in armed conflict, enhance the protection of medical care and ensure the documentation of acts of violence, attacks and threats against medical care, as well as accountability and redress.

6. In order to establish an adequate preventive framework, recommended measures include adhering to relevant international treaties; reinforcing national legislative frameworks; ensuring legal protection for medical ethics; promoting regular cooperation and the sharing of best practices; enhancing the role of United Nations peacekeeping operations; exerting influence to ensure respect for the law; and promoting awareness of the law and a culture of respect. The practical implementation of precautionary measures throughout military operations is also important in order to enhance the protection of medical care in armed conflict. To ensure the documentation of acts of violence, attacks and threats against medical care in armed conflict, as well as accountability and redress, recommended approaches include regular data collection, analysis and reporting on incidents; full, prompt, impartial, independent and effective investigations into alleged serious violations against medical care in armed conflict; the prosecution of alleged serious violations; and the provision of assistance and reparations to victims and the restoration of essential services.

7. In its resolution 2286 (2016), the Security Council has demonstrated its determination to strengthen the protection of medical care in armed conflict. We must now heed the Council's demands and take concrete action.

Recommendations of the Secretary-General on measures to prevent acts of violence, attacks and threats against the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and to better ensure accountability and enhance their protection

A. Establishing or reinforcing a framework of respect for, and protection of, the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities in armed conflict

Recommendation 1. Adhering to relevant international treaties

8. Member States should ratify or accede to, as the case may be, all international treaties that are relevant to the protection of medical care in armed conflict, including the Protocols Additional to the Geneva Conventions, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Arms Trade Treaty, the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies.

Recommendation 2. Reinforcing national legislative frameworks

9. Member States should undertake comprehensive reviews of their domestic laws and adopt the necessary reforms to ensure that they fully incorporate international legal obligations relevant to the protection of medical care in armed conflict. In particular, Member States should ensure that their domestic legal frameworks provide for, at a minimum:

(a) An unconditional, non-derogable right for individuals under their jurisdiction to access, on a non-discriminatory basis, goods and services necessary to meet their basic needs, including medical care, essential drugs, safe and potable water, the minimum essential food which is nutritionally adequate and safe to ensure freedom from hunger, and basic shelter, housing and sanitation;

(b) An obligation for Member States to respect the inviolability of United Nations premises, as laid out in the Convention on the Privileges and Immunities of the United Nations of 1946, and in the Convention on the Privileges and Immunities of the Specialized Agencies of 1947;

(c) Obligations for parties to armed conflict to:

(i) Search for, collect, evacuate and treat the wounded and sick, as far as practicable, with the least possible delay and without any distinction other than on medical grounds;

(ii) Protect and facilitate the search for, collection, evacuation and treatment of the wounded and sick by impartial humanitarian organizations as well as personnel exclusively engaged in medical duties, including first aid responders;

(iii) Respect and protect personnel exclusively engaged in medical duties;

(iv) Respect and protect hospitals and other medical facilities and means of transportation exclusively used for medical purposes;

(v) Protect and facilitate the rapid and unimpeded passage of medical and other humanitarian relief, including into territory and across conflict lines.

Recommendation 3. Guaranteeing the ability of personnel exclusively engaged in medical duties to act in line with medical ethics, without incurring sanctions or punishment for doing so

10. Member States should adopt specific legal and practical measures to guarantee the ability of personnel exclusively engaged in medical duties to treat patients without any distinction other than on medical grounds, in line with their ethical obligations, in all circumstances, without incurring any form of harassment, sanctions or punishment, including measures to guarantee respect for the confidentiality of information obtained in connection with the treatment of patients. Exceptions should be in full conformity with medical ethics, international humanitarian law and human rights standards, which implies, inter alia, that they should be: (a) strictly limited in time and subject to regular review; (b) precisely and exhaustively defined by domestic legislation; and (c) necessary and proportionate in light of a legitimate objective of general interest, in accordance with international human rights standards.

11. Member States should put in place measures to ensure that personnel exclusively engaged in medical duties and security sector personnel have a broad understanding of international humanitarian and human rights law and of the obligations of medical personnel under medical ethics, including the obligation to act in the patient's best interest, the obligation to guarantee medical confidentiality and the obligation to preserve life.

Recommendation 4. Promoting regular cooperation, including exchanges of information, analysis and best practices, among all stakeholders

12. Member States should establish, at the national level, a multi-stakeholder forum, including representatives of communities affected by attacks on medical care in armed conflict, which would meet regularly to share challenges and good practices on preventing and addressing acts of violence impacting the delivery of medical care and other forms of obstruction to its delivery in situations of armed conflict.

Recommendation 5. Enhancing the role of United Nations peace operations

13. As appropriate, taking into account the country-specific situation with regard to attacks against medical care in armed conflict, the role of United Nations peace operations in contributing to the creation of an environment conducive to the safe delivery of medical care in armed conflict should be strengthened. This includes capacity-building and support to security sector reform and accountability processes when reviewing or establishing mandates, and ensuring that the resources of peace operations are commensurate with their mandates.

Recommendation 6. Using available means of influence vis-à-vis parties to a conflict in order to ensure respect for, and prevent violations of, international law relating to the protection of medical care in armed conflict

14. States should use tools and means of leverage at their disposal, such as diplomatic, political and economic means, to ensure that parties to armed conflict respect their obligations under international law in relation to the protection of medical care in armed conflict, including by opening channels of dialogue or dedicating budgets to bilateral and multilateral assistance in the form of training, judicial and legislative reform, and support to relevant civil society initiatives.

15. In keeping with the spirit of the Arms Trade Treaty and similar regional instruments, Member States that export conventional weapons should assess the likelihood that they could be used to commit serious violations of international humanitarian or human rights law and refrain from exporting them if there is a substantial risk of such serious violations. Member States should give particular consideration to violations of the right to health, as well as violations of rules of international humanitarian law regarding medical care in armed conflict.

16. The Security Council should consider adopting measures, including under article 41 of the Charter of the United Nations, against individuals or entities determined by relevant subsidiary bodies of the Security Council as being responsible for, or complicit in, acts of violence or other acts affecting medical care in armed conflict in violation of international law.

Recommendation 7. Promoting awareness and compliance

17. All Member States, as well as parties to armed conflicts, with support from the United Nations and other relevant organizations, should promote a culture of respect for international humanitarian and human rights law, with a particular focus on the right to the enjoyment of the highest attainable standard of physical and mental health and the protection of medical care in armed conflict. To that effect, all Member States and parties to conflict, with support from the United Nations and relevant organizations, should undertake training programmes for military personnel and members of non-State armed groups on the protection of medical care in armed conflict. All Member States, with support from the United Nations and relevant organizations, should undertake general public awareness campaigns on the subject.

Recommendation 8. Reporting on the implementation of Security Council resolution 2286 (2016)

18. Member States should, on a voluntary basis, report to the Secretary-General on measures they have taken to implement relevant provisions of Security Council resolution 2286 (2016). The shared information will contribute, as appropriate, to the reports mentioned in paragraph 12 of Security Council resolution 2286 (2016) and to the elaboration of a United Nations compendium of best practices.

B. Enhancing the protection of medical care in armed conflict

Recommendation 9. Adopting, reviewing, revising and implementing operational precautionary measures

19. Parties to armed conflicts should review rules of engagement, military manuals, tactical directives, standard operating procedures and other similar

operational rules or guidelines, and take the necessary steps to ensure that such materials prohibit the targeting of protected medical staff, facilities and transports and include precautionary measures on the planning and conduct of military operations, in order to prevent and minimize the consequences of hostilities on medical care in armed conflict. This might include measures such as:

(a) Specific measures to guarantee respect for the exclusively humanitarian character of hospitals and other medical facilities, such as: (i) prohibiting the use of hospitals and other medical facilities and transports in support of the military effort; (ii) prohibiting the conduct of hostilities and law enforcement operations within such facilities and adopting specific measures to prevent and minimize their potential negative consequences on the delivery of medical care; and (iii) prohibiting a military presence and the stockpiling of military materiel in, or in the vicinity of, hospitals and other medical facilities;

(b) Recording and mapping the presence of personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and other medical facilities, and regularly updating this information, including through enhanced information exchanges and real-time coordination with medical and humanitarian actors on the ground and the use of appropriate technology;

(c) Providing for the exceptional character of attacks against a medical facility that has lost its protection under international humanitarian law or against a military objective located in the vicinity of a medical facility. If such attacks must be conducted:

(i) Advance warning with a reasonable time-limit to heed the warning should always be issued, taking into particular consideration children, pregnant women, persons with disabilities, elderly persons and technology-dependent and/or critically ill patients, who may require special assistance and care for evacuation;

(ii) Personnel exclusively engaged in medical duties and patients should be provided with information on areas to which patients can be safely evacuated and where medical care can be delivered;

(iii) For all parties, the safe passage of personnel exclusively engaged in medical duties and patients to such safe areas should be facilitated;

(iv) All other feasible precautions should be taken to avoid and minimize civilian casualties and damage to the medical facility in question, and the presence of medical personnel and patients within the facility should continue to be taken into account when undertaking proportionality assessments, even when an advance warning is not heeded.

20. Throughout the military chain of command and other appropriate channels, parties to armed conflicts should ensure the dissemination and implementation of applicable rules of engagement, military manuals, tactical directives, standard operating procedures and other similar operational documents or guidelines, with specific attention to precautionary measures aimed at minimizing the consequences of hostilities on medical care.

21. As part of these efforts, parties to armed conflicts should issue and disseminate a military order or directive stating: (a) the obligations under international law related to the protection of medical care in armed conflict; (b) the

roles, responsibilities and practical measures set out in applicable rules of engagement, military manuals, tactical directives, standard operating procedures and other similar operational documents or guidelines on the protection of medical care in armed conflict; (c) sanctions for breaches; and (d) a requirement to report any act that could constitute such a breach to appropriate authorities through the chain of command.

22. Parties to armed conflicts should establish oversight bodies to monitor compliance by their forces with the operational rules in place for the protection of civilians, with specific attention to the protection of medical care in armed conflict, and assess incidents in order to propose specific remedial action through the appropriate chain of command, including, when appropriate, revisions of applicable rules and procedures.

23. In consultation with personnel exclusively engaged in medical duties, administrators of hospitals and other medical facilities, and relevant local, national and international organizations, parties to armed conflicts should adopt contingency plans, including relocation plans, in anticipation of situations that could jeopardize the organization and provision of medical care to the wounded and sick, and take steps and institute security measures to protect patients and ensure that hospitals and other medical facilities, their means of transportation and their supplies, remain safe.

C. Enhancing the documentation of, and accountability for, acts of violence against medical care in armed conflict and providing redress and assistance

Recommendation 10. Contributing to regular data collection, analysis and reporting on incidents

24. As part of broader efforts to track and collect data and report on trends and gaps in compliance with international humanitarian and human rights law, and building upon existing tools such as the monitoring and reporting mechanism on grave violations against children in situations of armed conflict, relevant human rights special procedures and in-country humanitarian coordination mechanisms, the United Nations, in collaboration with humanitarian and other relevant actors, should enhance its efforts to ensure that data on the protection of medical care in armed conflict, including the direct impact of hostilities on medical care and the indirect consequences on the general civilian population, is systematically collected, verified and analysed. Except in cases where disclosure would risk endangering the safety or security of current or former personnel of the United Nations, victims, witnesses or sources, or otherwise prejudicing the security or proper conduct of any operation or activity of the United Nations, such data should made publicly available in order to inform response at the national, regional and global levels.

25. Member States should enhance their support to United Nations monitoring, data collection and analysis efforts, including through support to existing independent monitoring and reporting mechanisms such as the Security Council-mandated monitoring and reporting mechanism on grave violations against children in situations of armed conflict and relevant human rights special procedures, as well as their support to relevant entities such as United Nations peace operations, the World Health Organization, the United Nations Children's Fund or the United Nations Office for the Coordination of Humanitarian Affairs.

26. Member States should establish national data collection and analysis systems on medical care in armed conflict and actively engage in and support the regular sharing of analysis and lessons learned at the regional and international levels, in order to develop global coordinated strategies to enhance the protection of medical care in armed conflict.

27. Member States should ensure that the collected information is shared with independent monitors and independent monitoring and reporting mechanisms and allow for full and unhindered access of independent monitors to affected locations and persons.

Recommendation 11. Ensuring full, prompt, impartial, independent and effective investigations into serious violations of international law relating to the protection of medical care in armed conflict

28. Member States, with the support of the United Nations, should strengthen the capacity of national institutions to carry out and develop protocols and processes to ensure full, prompt, impartial, independent and effective investigations into allegations of serious violations of international law relating to the protection of medical care in armed conflict, with a view to reinforcing preventive measures, ensuring accountability and providing reparations to victims.

29. Member States should ensure that effective investigations are systematically conducted into allegations of serious violations of international law relating to the protection of medical care in armed conflict, including by requesting and consenting to inquiries by the International Humanitarian Fact-Finding Commission established pursuant to article 90 of Additional Protocol I to the Geneva Conventions.

30. When Member States fail to carry out such investigations, the Security Council should consider establishing international fact-finding missions or commissions of inquiry, or have recourse to the International Humanitarian Fact-Finding Commission established pursuant to article 90 of Additional Protocol I to the Geneva Conventions, to investigate allegations of serious violations of international law relating to the protection of medical care in armed conflict.

31. Member States and parties to armed conflicts should provide support to, and facilitate the work of, fact-finding missions and commissions of inquiry established by the Secretary-General or United Nations bodies, including the Security Council and the Human Rights Council.

Recommendation 12. Ensuring that individuals suspected of perpetrating serious violations of international law relating to the protection of medical care in armed conflict are prosecuted

32. Member States should ensure that, in domestic jurisdictions, all serious violations of international law relating to the protection of medical care in armed conflict constitute crimes and that suspected perpetrators are prosecuted, including through the establishment and exercise of universal jurisdiction over international crimes.

33. Member States should also ensure that, in national jurisdictions, all violations of existing rules of engagement or standard operating procedures relating to the protection of medical care in armed conflict are subject to sanctions that are

graduated and combinable to ensure that the penalty is commensurate with the seriousness of the violation.

34. Member States, with the support of the United Nations, should strengthen the capacity of national law enforcement and judicial authorities to enforce such sanctions in line with human rights obligations, including through the provision of training for judges and prosecutors.

35. Where national accountability mechanisms are insufficient or inadequate to address serious violations, Member States and the Security Council should ensure that appropriate international accountability mechanisms are established, or existing international accountability mechanisms, including the International Criminal Court, are resorted to, and provided with adequate cooperation and support to fulfil their mandates.

Recommendation 13. Providing reparations and assistance to victims and restoring essential services

36. Member States should ensure adequate, effective and prompt reparations to victims of attacks against medical care in armed conflict.

37. Member States should commit to providing assistance to victims, including personnel exclusively engaged in medical duties and affected communities, notably in the form of medical care, rehabilitation and psychological support, and measures to support their social and economic inclusion.

38. Member States, with the assistance of the United Nations and other relevant organizations, should ensure the restoration of essential services, including by rebuilding hospitals and other medical facilities destroyed or damaged in attacks, clearing explosive remnants of war, providing emergency medical care and establishing safe routes and alternative hospitals and other medical facilities, as well as safe environments for the delivery of preventive medical services such as vaccination campaigns.